



## City of Seattle

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**Department of Planning and Development**  
D. M. Sugimura, Director

**CITY OF SEATTLE  
ANALYSIS AND DECISION OF THE DIRECTOR OF  
THE DEPARTMENT OF PLANNING AND DEVELOPMENT**

**Application Number:** 3005378  
**Applicant Name:** Josh Brower  
**Address of Proposal:** 2629 NW 54<sup>th</sup> St.

### **SUMMARY OF PROPOSED ACTION**

Shoreline Substantial Development Permit to allow a 55-foot tall, 11,814 sq. ft. floating boat repair shed and establish use for minor vessel repair (already constructed).

The following approvals are required:

**Shoreline Substantial Development Permit** – (SMC Chapter 23.60)

**SEPA - Environmental Determination** - (SMC Chapter 25.05)

**SEPA DETERMINATION:** ☐ Exempt ☐ DNS ☐ EIS

☒ DNS with conditions

☐ DNS involving non-exempt grading or demolition or  
involving another agency with jurisdiction.

### **BACKGROUND DATA**

#### **Site Area and Vicinity Development**

The subject site is located on a waterfront parcel on the Salmon Bay Waterway at 2629 NW 54<sup>th</sup> St. The site is zoned Industrial General 1 with an unlimited height limit for industrial uses and 65 feet for nonindustrial uses (IG1 U/65) and is within an Urban Industrial (UI) shoreline environment. The site is developed with commercial moorage and vessel repair.

### Proposal

The proposal is for the continued use of the Diamond Painting float located within the Stabbert Maritime Yacht & Shipyard, LLC. Diamond Painting has leased moorage for the float from Stabbert Shipyard since 2006. The float is used for maintenance and repair of large yachts. The float measures 179 feet long, 66 feet wide and 55 feet tall. The sides of the float consist of galvanized steel framing covered with flexible, translucent material. No new construction is proposed for this project.

### Public Comment

No public comments were received during the public comment period that ended on September 28, 2007.

### **ANALYSIS – ENVIRONMENTALLY CRITICAL AREAS**

The Environmentally Critical Areas Ordinance was adopted to promote safe, stable, and compatible development that avoids adverse environmental impacts and potential harm on the parcel and to adjacent properties.

The proposed activities include development over water within the shoreline habitat environmentally critical area, pursuant to SMC 25.09.020. The activities are allowed by Seattle's shoreline regulations, as analyzed below; and therefore are consistent with allowed development in the ECA shoreline habitat pursuant to SMC 25.09.200, as long as sufficient habitat mitigation is provided pursuant to SMC 25.09.200 (B) (3).

The project proponent has agreed to provide \$102,552 to the City of Seattle to implement salmonid habitat enhancement actions in the Lake Washington Ship Canal and/or Lake Union area to mitigate for the aquatic and shoreline habitat impacts of the overwater coverage resulting from the placement of this floating structure at this location. These enhancement actions will be selected by City of Seattle personnel, including experienced fisheries biologists, in order to be consistent with best available science to replace the lost functions and values associated with the overwater coverage resulting from this structure in the Lake Washington Ship Canal area. The City of Seattle will consult with fisheries biologists with the Washington Department of Fish and Wildlife, the Muckleshoot Indian Tribe, and other relevant authorities as part of the selection process for these mitigation actions. This mitigation identification and implementation will be focused on actions such as removal of overwater coverage and removal of submerged debris in the nearshore environment of Lake Union and the Ship Canal that are known to provide habitat for predators of migrating salmon in this area. Once completed, these actions will adequately mitigate for the project's impacts, pursuant to mitigation requirements for new overwater coverage (SMC 25.09.200 (B) (3)). Payment of \$102,552 to the City of Seattle is a condition of approval of this permit, as described in the Shoreline and SEPA conditions at the end of this report.

## **ANALYSIS - SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT**

### **Substantial Development Permit Required**

Section 23.60.030 of the Seattle Municipal Code provides criteria for review of a shoreline substantial development permit and reads: *A substantial development permit shall be issued only when the development proposed is consistent with:*

- A. *The policies and procedures of Chapter 90.58 RCW;*
- B. *The regulations of this Chapter; and*
- C. *The provisions of Chapter 173-27 WAC.*

Conditions may be attached to the approval of a permit as necessary to assure consistency of the proposed development with the Seattle Shoreline Master Program and the Shoreline Management Act.

### **A. THE POLICIES AND PROCEDURES OF CHAPTER 90.58.RCW**

Chapter 90.58 RCW is known as the Shoreline Management Act of 1971. It is the policy of the State to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy contemplates protecting against effects to public health, the land use and its vegetation and wild life, and the waters of the state and their aquatic life, while protecting public right to navigation and corollary incidental rights. Permitted uses in the shoreline shall be designed and conducted in a manner to minimize, insofar as possible, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.

The Shoreline Management Act provides definitions and concepts, and gives primary responsibility for initiating and administering the regulatory program of the Act to local governments. The Department of Ecology is to primarily act in a supportive and review capacity, with primary emphasis on insuring compliance with the policy and provisions of the Act. As a result of this Act, the City of Seattle adopted a local Shoreline Master Program, codified in the Seattle Municipal Code at Chapter 23.60. Development on the shorelines of the state is not to be undertaken unless it is consistent with the policies and provisions of the Act, and with the local master program. The Act sets out procedures, such as public notice and appeal requirements, and penalties for violating its provisions. As the following analysis will demonstrate, the subject proposal is consistent with the procedures outlined in RCW 90.58.

### **B. THE REGULATIONS OF CHAPTER 23.60**

The regulations of SMC, Section 23.60.064 require that the proposed use(s): (1) conform to all applicable development standards of both the shoreline environment and underlying zoning; (2) be permitted in the shoreline environment and the underlying zoning district and (3) satisfy the criteria of shoreline variance, conditional use, and special use permits as may be required.

SMC 23.60.004 - Shoreline Policies

The Shoreline Goals and Policies that are part of the Seattle Comprehensive Plan's Land Use Element and the purpose and locational criteria for each shoreline environment designation contained in SMC 23.60.220 must be considered in making all discretionary decisions in the shoreline district.

The proposed development action will occur over water and is located within an Urban Industrial (UI) shoreline environment. The purpose of the UI Environment is to provide efficient use of industrial shorelines for water-dependent and water-related industrial uses. The code allows marine retail sales and services uses, including the proposed minor vessel repair, outright over water, as a principal use on a waterfront lot within the Urban Industrial (UI) Shoreline Environment (SMC 23.60.840).

Development Standards

Marine retail sales and services must meet the development standards for the UI Environment (SMC 23.60.870), as well as the general development standards for all shoreline environments (SMC 23.60.152). Additionally, the proposed project must also meet the development standards of the underlying General Industrial (IG1 U/65) zone (SMC 23.50). The Director may attach to the permit or authorize any conditions necessary to carry out the spirit and purpose of, and ensure the compliance with, the Seattle Shoreline Master Program (SMC 23.60.064).

The proposed action is therefore subject to the following general and specific shoreline development standards:

General Development Standards for all Shoreline Environments (SMC 23.60.152)

These general standards apply to all uses in the shoreline environments. They require that all shoreline activity be designed, constructed, and operated in an environmentally sound manner consistent with the Shoreline Master Program and with best management practices for the specific use or activity. All shoreline development and uses must, in part: (1) minimize and control any increase in surface water runoff so that receiving water quality and shoreline properties are not adversely affected; (2) be located, designed, constructed, and managed in a manner that minimizes adverse impact to surrounding land and water uses and is compatible with the affected area; and (3) be located, constructed, and operated so as not to be a hazard to public health and safety.

The floating boat repair structures, as conditioned and mitigated, are consistent with the general standards for development within the shoreline area. General development standards (SSMP 23.60.152) state that Best Management Practices shall be followed for any development in the shoreline environment. These measures are required to prevent contamination of land and water. The Stormwater, Grading and Drainage Control Code (SMC 22.800) places considerable emphasis on improving water quality. A condition is imposed on this permit pursuant to Shoreline and SEPA authority, to ensure that Best Management Practices are followed. To ensure conformance with the General Development Standards and the Shoreline Master Program, the proponent will be required to notify contractors and subcontractors of the conditions of this permit.

The following general development standards are particularly relevant to this project and are highlighted below:

- A. *The location, design, construction and management of all shoreline developments and uses shall protect the quality and quantity of surface and ground water on and adjacent to the lot and shall adhere to the guidelines, policies, standards and regulations of applicable water quality management programs and regulatory agencies. Best management practices such as paving and berming of drum storage areas, fugitive dust controls and other good housekeeping measures to prevent contamination of land or water shall be required.*

The location of the subject project is over the water and this area will be used for vessel repair work. Materials used for vessel repair such as paints, fiberglass, petroleum products, and other like products could adversely impact water quality, the aquatic environment, and species that use this area; particularly if these materials are not properly used, stored, and prevented from entering the water. The project proponents have committed in their application material to implement Best Management Practices (BMPs) for the protection of the aquatic environment, including using all BMPs required by Department of Ecology for vessel repair work over and adjacent to the water.

It is a condition of this approval that the proposed vessel repair use adhere to the guidelines, policies, standards, and regulations of applicable water quality management programs and regulatory agencies, including obtaining any necessary permit(s) from Ecology for the vessel repair work proposed at this facility. These BMPs shall be clearly posted for all employees to see and use at this facility, and employees shall be properly trained to implement all applicable BMPs for vessel repair work at this facility.

- H. *All shoreline developments and uses shall be located, designed, constructed and managed to avoid disturbance, minimize adverse impacts and protect fish and wildlife habitat conservation areas including, but not limited to, spawning, nesting, rearing and habitat areas, commercial and recreational shellfish areas, kelp and eel grass beds, and migratory routes. Where avoidance of adverse impacts is not practicable, project mitigation measures relating the type, quantity and extent of mitigation to the protection of species and habitat functions may be approved by the Director in consultation with state resource management agencies and federally recognized tribes.*

This project is proposed to occur in the aquatic and shoreline environment of the Lake Washington Ship Canal that provides habitat for Chinook salmon. The project site serves as a migration corridor as well as potentially rearing area for juvenile Chinook salmon from the Cedar River and other water bodies in Water Resource Inventory Area 8. Additionally, predators of juvenile Chinook are known to inhabit areas under overwater structures and may use these areas as cover while preying on juvenile Chinook. Overwater coverage reduces the amount and quality of natural habitat of juvenile Chinook salmon and provides habitat for predator species of juvenile Chinook.

The project proponent has agreed to provide funds in the amount of \$102,552 to the City of Seattle to implement salmonid habitat enhancement actions in the Lake Washington Ship Canal and Lake Union area to mitigate for the aquatic and shoreline habitat impacts of the overwater

coverage resulting from the placement of this floating structure at this location. Please see Environmental Critical Area analysis above for more information on this mitigation.

Development Standards for UI Shoreline Environments (SMC 23.60.870)

The development standards set forth in the Urban Industrial Shoreline Environment are as follows:

SMC 23.60.872 Height in the UI Environment

The structure's height of 55 feet is consistent with the maximum height limit allowed in the Ship Canal for structure accessory to a water-dependent or water-related use, pursuant to SMC 23.60.872 B 2.

SMC 23.60.874 Lot coverage in the UI Environment

Structures may occupy up to one hundred percent of both submerged and dry-land areas of waterfront lots in the UI environment.

SMC 23.60.874 View corridors in the UI Environment

A view corridor is not required for this project, since water-dependent and water-related uses occupy more than 50 percent of the dry land portion of the lot

SMC 23.60.880 Development standards specific to water-related uses on waterfront lots in the UI Environment.

Water-related uses shall be designed and located on the shoreline to encourage efficient use of the shoreline. Design considerations may include setbacks from all or a portion of the waters' edge, joint use of piers and wharves with other water-related or water-dependent uses, development of the lot with a mixture of water-related and water-dependent uses, or other means of ensuring continued efficient use of the shoreline.

The project is designed to maintain the existing level of efficient use of the shoreline with one pier to serve the shed.

SMC 23.60.882 Regulated public access in the UI Environment

This use is considered a water-related use and is not required to provide public access.

**C. THE PROVISIONS OF CHAPTER 173-27 WAC**

Chapter 173-27 WAC sets forth permit requirements for development in shoreline environments and give the authority for administering the permit system to local governments. The State acts in a review capacity. The Seattle Municipal Code Section 23.60 (Shoreline Development) and the RCW 90.58 incorporates the policies of the WAC by reference. These policies have been addressed in the foregoing analysis and have fulfilled the intent of WAC 173-27.

### Summary

The proposed project, as conditioned, including the proposed mitigation, is consistent with the provisions set forth by 90.58 RCW, 173-27 WAC, and Chapter 23.60 SMC also known as the Seattle Shoreline Master Program (SSMP), thereby minimizing any adverse impact to the shoreline environment, to water quality, to the natural shoreline processes, and the surrounding land and water uses.

### **DECISION - SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT**

The Shoreline Substantial Development Permit is **CONDITIONALLY GRANTED** subject to the conditions listed at the end of this decision.

### **ANALYSIS - SEPA**

The initial disclosure of the potential impacts from this project was made in the environmental checklist submitted by the applicant dated August 13, 2007 and the Biological Evaluation (BE) dated July 6, 2007. The information in the checklist, BE, and the experience of the lead agency with review of similar projects form the basis for this analysis and decision.

The SEPA Overview Policy (SMC 25.05.665 D) clarifies the relationship between codes, policies, and environmental review. Specific policies for each element of the environment, certain neighborhood plans, and other policies explicitly referenced may serve as the basis for exercising substantive SEPA authority.

The Overview Policy states, in part: "Where City regulations have been adopted to address an environmental impact, it shall be presumed that such regulations are adequate to achieve sufficient mitigation," subject to some limitations. Under such limitations/circumstances (SMC 225.05.665 D1-7) mitigation can be considered. Thus, a more detailed discussion of some of the impacts is appropriate.

### Short-Term Impacts

#### Construction Impacts

The floating shed is already constructed and in place with no further additions or modifications to this structure proposed, so there are no further construction-related or temporary impacts associated with this project.

### Long-Term Impacts

#### Plants and Animals

Chinook salmon, a species listed as threatened under the Endangered Species Act (ESA) in March 1999, are known to inhabit the Lake Washington Ship Canal including the proposed project area. Under the City of Seattle's Environmental Policies and Procedures 25.05.675 N (2) it states in part: *A high priority shall also be given to meeting the needs of state and federal threatened, endangered, and sensitive species of both plants and animals.*

This project is proposed to occur in the aquatic and shoreline environment of the Lake Washington Ship Canal that provides habitat for Chinook salmon. The project site serves as a migration corridor as well as potentially rearing area for juvenile Chinook salmon from the Cedar River and other water bodies in Water Resource Inventory Area 8. Additionally, predators of juvenile Chinook are known to inhabit areas under overwater structures and may use these areas as cover while preying on juvenile Chinook. Overwater coverage reduces the amount and quality of natural habitat of juvenile Chinook salmon and provides habitat for predator species of juvenile Chinook.

The project proponent has agreed to provide \$102,552 to the City of Seattle to implement salmonid habitat enhancement actions in the Lake Washington Ship Canal and Lake Union area to mitigate for the aquatic and shoreline habitat impacts of the overwater coverage resulting from the placement of this floating structure at this location. Please see Environmental Critical Area analysis above for more information on this mitigation.

#### Environmental Health/Water Quality

SEPA Policy 25.05.675.F provides the authority to mitigate impacts resulting from toxic or hazardous materials and transmissions. The location of the subject project is over the water and this area will be used for boat repair work. Material that will be used at the site may include but is not limited to: fiberglass, fiberglass resin, paint, gelcoat, and petroleum products. There exists potential to drop some of this hazardous material into the water and this would adversely impact water quality, plants and animals, and the aquatic environment. Additionally, other such work such as sanding can introduce deleterious material into the aquatic environment. In light of this, the proposal will be conditioned to require that all people that repair boats or use any deleterious material and is associated with this project shall read, sign, and follow the Best Management Practices plan developed for this site. This plan must be consistent with the guidelines, policies, standards, and regulations of applicable water quality management programs and regulatory agencies, such as Department of Ecology's permitting requirement and Best Management Practices for any vessel repair activities over water. The BMPs shall include a description of preventative measures that shall be used to prevent toxic substances from entering the Lake Washington Ship Canal, measures that will be taken in the event of a toxic spill, and the requirement that an emergency spill kit be kept at the site.

#### DECISION SEPA

This decision was made after review by the responsible official on behalf of the lead agency of a completed environmental checklist and other information on file with the responsible department. This constitutes the Threshold Determination. The intent of this declaration is to satisfy the requirement of the State Environmental Policy Act (RCW 43.21.C), including the requirement to inform the public of agency decisions pursuant to SEPA.

[X] Determination of Non-Significance with conditions. This proposal has been determined to not have a significant adverse impact upon the environment. An EIS is not required under RCW 43.21.030(2) (c).



- [ ] Determination of Significance. This proposal has or may have a significant adverse impact upon the environment. An EIS is required under RCW 43.21C.030(2)(C).

**SEPA and SHORELINE CONDITIONS**

*Permanent for the Life of the Project:*

1. Diamond Painting must meet conditions of Settlement Agreement signed with City of Seattle dated August 24, 2011, including payment of habitat mitigation funds to the City of Seattle pursuant to the schedule outlined in the Settlement Agreement.
2. Diamond Painting shall obtain all necessary permit(s) from Department of Ecology for proposed vessel repair work at this facility.

*Permanent for the Life of the Project:*

3. Each person that repairs vessels at this site shall be required to read, sign, and follow the Best Management Practices plan that has been developed for this project. The BMP plan shall follow all applicable BMPs required by Washington Department of Ecology for protection of water quality and vessel repair activities near and over water.
4. A spill prevention kit shall be located on site and at least 3 employees shall be properly trained in using the spill protection kit.

Signature: \_\_\_\_\_ (signature on file) Date: May 21, 012

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